It is not for us to say what instructions may properly be given on a preliminary enquiry that has been concluded by the discharge of an accused person. Had it been the intention of the legislature to give the Public Prosecutor the power to direct a Magistrate to reverse his order of discharge and commit the accused for trial, this power would have been expressed in plain and clear language. Why, indeed, should the Public Prosecutor be given this unusual power, when he has an appropriate remedy in that he can order the holding of another preliminary enquiry before another Magistrate?

We have no doubt that the order made by the Public Prosecutor in this case was *ultra vires* the provisions of the Criminal Procedure Code. The appeal against the decision to discharge is dismissed.

Order accordingly.

REG. v. LIM KWANG SENG & ORS.

[O. Cr. J. (Whitton J.) December, 21, 1955]

[Singapore — Criminal Motion No. 16 of 1955]

Criminal Procedure Code, 1955, ss. 241 & 406 — Criminal Justice (Temporary Provisions) Ordinance, 1954, s. 7 — Offence bailable as of right — Application for remand in public custody — Penal Code s. 147.

In this case eight persons were charged under s. 147 of the Penal Code, which is a bailable offence. The prosecution applied that the accused be remanded in custody for four days. This was opposed by counsel for the accused, who applied for bail. The learned Magistrate purporting to act under s. 241 of the Criminal Procedure Code, 1955, made the order for remand. The case was referred to the High Court under s. 7 of the Criminal Justice (Temporary Provisions) Ordinance, 1954.

Held: (1) the special procedural provision laid down in s. 7 of the Criminal Justice (Temporary Provisions) Ordinance, 1954, could not have been intended by the Legislature to abrogate the substantive right of bail conferred by s. 406 of the Criminal Procedure Code, 1955; (2) the learned Magistrate in this case should have acceded to the request of counsel of the accused and have offered them bail before deciding to grant a postponement under s. 241 of the Criminal Procedure Code, 1955.

CRIMINAL MOTION.

T. A. Mahony (Crown Counsel) for the Crown.

K. K. Bezboruah for the accused.

Whitton J. : — In this matter eight persons charged under section 147 Penal Code were remanded in custody, on the application of the Crown, for four days, despite a request for bail by their counsel. The Eighth Magistrate in making the order purported to act under section 241 Criminal Procedure Code. The case was then referred to the High Court under section 7 of the Criminal Justice (Temporary Provisions) Ordinance, 1954.

Now under section 406 Criminal Procedure Code any person accused of a bailable offence who is prepared to give bail must be released by the Police or the Court as the case may be. Presumably in so providing, although it does not say so, the section pre-supposes the bail contemplated will be of an amount which may reasonably be considered adequate to secure the accused person's further attendance at the proceedings. As then an offence under section 147 is bailable as of right, and since I do not think the special procedural provision laid down in section 7 of the Criminal Justice (Temporary Provisions) Ordinance can have been intended by the Legislature tacitly to abrogate the important substantive right of bail conferred by section 406, I am unable to see that reference to the High Court under section 7 can have any practical effect in cases such as this where the scheduled offence is a bailable one.

In my view the Magistrate before deciding to grant a postponement under section 241 should have acceded to the request by the Counsel of the accused and have offered them bail. Had this been done no question of the accused being remanded in custody without having had the opportunity to find bail could have arisen.

On these grounds I ordered the accused be offered bail.

Order accordingly.

SEET KOW SOO v. PUBLIC PROSECUTOR

[A. Cr. J. (Storr J.) December 15, 1955]

[J. B. — Criminal Appeal No. 27 of 1955]

Labour Code (Johore), Enactment No. 82, ss. 159 and 222 — Plea of guilty by "manager" who is not "owner" of estate to offence under s. 159(ii).

In this case the appellant, the manager of Kok Ann Estate, Pontian, pleaded guilty by letter to the offence under s. 159(ii) of the Labour Code, and the President of the Sessions Court convicted him and fined him $5,000. Sub-s. (ii) of s. 159 of the Labour Code reads: "Every employer who houses any labourer in a building the state of which, or of the surroundings of which, is such as to endanger the health or safety of such labourer shall be liable on conviction to a fine not exceeding one hundred dollars for each labourer housed in such building." On appeal against the sentence, —

Held: (1) s. 222 of the Labour Code makes it clear that although a manager can be proceeded against as the "employer" and convicted and fined, yet it is the owner against whom the section is aimed and it is the owner who, if the manager did not pay the fine, would have to pay, or the fine could be levied by distress and sale of the estate; (2) in the circumstances of the case, and in view of the high price of rubber and the probable profits made by the owners, the appellant's lack of care as to the housing of the labourers was a very serious matter, and therefore the sentence imposed by the President was not manifestly excessive.

MAGISTRATE'S CRIMINAL APPEAL.

R. H. Green for the appellant.

Bahaudin bin Yacob (Federal Counsel) for the respondent.

Storr J. : — The appellant, the manager of Kok Ann Estate, Pontian, Johore, pleaded guilty by letter to the offence under section 159(ii), Labour Code, Johore, and the learned President, after hearing the facts outlined by the Deputy Commissioner for Labour, Johore, and considering a joint report by the Health Officer, Johore South, and the Deputy Commissioner for Labour, convicted the appellant and fined him $5,000. The appeal is against the sentence only.

Mr. R. H. Green who appeared for the appellant stressed the point that the appellant was only the manager and not the owner and was also suffering, and had suffered for some years, from tuberculosis. He submitted that although the appellant as manager was liable, because the term "employer" included manager, yet it was not beyond the realm of possibility that he had no power to make the owners, who were really responsible, comply with section 159(i) of the Enactment, and in any event the fine was excessive; further that, in a case such as this, the appellant had no right of indemnity from the owners.

Che Bahaudin, Deputy Public Prosecutor, who appeared for the Controller of Labour, after stating that the facts disclosed a shocking state of affairs on the estate, left the matter to the Court.

Now I think that Counsel must have overlooked section 222 of the Enactment which reads :—

"In the event of any person within the definition of the word 'employer' being subjected to any fine or penalty under the provisions of this Enactment, such fine or penalty may, in addition to any other means of recovery, be recovered by distress and sale of the estate, mine or place of employment, or any property belonging to such estate, mine or place of employment."

That section makes it quite clear that although a manager can be proceeded against as the "employer" and convicted and fined, yet it is the owner against whom the section is aimed and it is the owner who, if the manager did not pay the fine, would have to pay, or the fine could be levied by distress and sale of the estate.

I think, therefore, that the main grounds stressed by Mr. Green in mitigation of the fine imposed by the learned President are nullified or perhaps, I should say, do not and could not apply to this case if the owners were personally before this Court.

The report (Ex. P2) shows a most deplorable state of affairs as regards the accommodation provided by the owners for the labourers: in fact it shows a complete lack of interest in their welfare and that they were left to live in a state a little better than animals. I am surprised that in these days such squalor has been permitted for so long.

Further, in view of the high price of rubber and the probable profits made by the owners, I consider that the appellant's lack of care as to the housing of the labourers is a very serious matter. In the circumstances of this case, I find it quite impossible to come to the conclusion that the learned President has in any way erred in law or that the sentence of a fine of $5,000 is manifestly excessive.

The appeal is dismissed.

Appeal dismissed.

Solicitors : *Braddell Bros.*

RAYNER v. RAYNER

[O. C. J. (Taylor J.) February 15, 1956]

[Singapore — Divorce No. 10 of 1955]

Divorce — Jurisdiction — Acquisition of domicil by choice.

This was a petition for dissolution of marriage. The petitioner-husband was born and educated in England and his domicil of origin is therefore English. It was necessary for him to show that he had acquired a domicil of choice in Singapore. It was argued that where a man has resolved not to reside again in his country of origin, the mere fact of residence in any other place, though for the purpose of employment, will show the acquisition of a new domicil.

Held: there was no evidence in this case to show that the petitioner had chosen Singapore as the place in which he will reside indefinitely and therefore on the facts the petitioner had failed to show that he had acquired a domicil here.

Cases referred to :—

(1) *Bates v. Bates* (1951) M.L.J. 95.

(2) *Marshall v. Marshall* (1956) M.L.J. 122.

DIVORCE, *In forma pauperis.*

J. L. P. Harris for the petitioner.

R. K. Booker for the respondent.

Taylor J. : — This is a husband's petition for dissolution of marriage under the local Divorce Ordinance; the petitioner was born and educated in England and it is clear that his domicil of origin was English; it is therefore necessary for him to show that he has acquired a domicil of choice in Singapore. The onus of proving a domicil of choice is, in law, a heavy one.

The petitioner is thirty years old. He joined the Army during the war and in 1946 went abroad with his unit; he met and married the respondent in India in 1947; they agreed that they would work in India but have their children educated in England. The husband continued in military service until 1948 when he elected to be demobilised in India, having obtained civil employment in the British High Commissioner's office. This continued till 1952 when his contract